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Letter dated 15 April 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 September 2002 (S/2002/1010).

The Counter-Terrorism Committee has received the attached supplementary report from the Kingdom of Nepal, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 31 March 2003 from the Permanent Representative of Nepal to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Further to our letter of 28 December 2001 containing the report presented by His Majesty's Government of Nepal pursuant to paragraph 6 of resolution 1373 (2001) (S/2001/1326, annex) and with reference to your letter dated 30 August 2002, I have the honour to enclose the supplementary report on measures taken by the Government to control terrorism (see enclosure).

(*Signed*) Murari Raj **Sharma**
Ambassador
Permanent Representative

Enclosure

The following is the supplementary information from His Majesty's Government of Nepal in response to the communication dated 30 August 2002 from the Chairman of the Counter-Terrorism Committee (CTC) addressed to the Permanent Representative of Nepal to the United Nations.

Paragraph 1

Point 1: Does Nepal have any provision for regulating informal banking networks? Please outline such provisions.

There are the following provisions that directly and indirectly help regulate informal banking networks:

1. The Nepal Rastra Bank Act, 2058 (2002) provides that no banking transaction shall take place without the authorization from the central bank. Any contravention of this provision is punishable by the Act.

2. Under section 3 (1) (f) of the Terrorism and Disruptive Activities (Control and Punishment) Act, 2058 (2002), any act to forcefully collect cash or goods-in-kind, to loot property for the purpose of committing any terrorist and disruptive crime is punishable with imprisonment.

3. The same Act under section 5 (7) provides that security officials, if they have adequate and reasonable grounds to believe that an individual has been involved in terrorist and disruptive crime, may suspend the bank account or passport of such individual.

4. Under section 14 (1) of the same Act, any property, equipment, or vehicle used to commit terrorist and disruptive crime shall be confiscated.

5. The Revenue Intelligence Department, under the Ministry of Finance, is charged with the responsibility of monitoring informal banking activities such as transfer of foreign currency, financial transactions and related matters.

6. The Union and Association Registration Act provides that all social or financial institutions or firms, whether big or small, may be established only after obtaining prior authorization of His Majesty's Government of Nepal.

7. Similarly, the Income Tax Act provides that all individuals, companies and corporations have to declare their income as well as the source thereof within three months after the completion of each fiscal year.

Point 2: Please explain how Nepal proposes implementing subparagraphs 1 (b) to (d) of the resolution.

The following provisions exist in the Terrorist and Disruptive Activities (Control and Punishment) Act to implement the above subparagraphs:

1 (b) As provided for in section 10 (6), those who are found involved in terrorist and disruptive crimes will be imprisoned for a period that may range from 5 to 10 years.

1 (c) Section 5 provides that the bank account of a suspected terrorist can be frozen.

1 (d) Section 3 of the same Act has a provision whereby no one can forcibly collect funds including in kind. Similarly, any property, equipment or means used for terrorist or disruptive purposes will be confiscated.

Point 3: In particular, could Nepal please provide an outline of the legislative provisions and procedures that exist for monitoring suspicious financial transactions apart from those mentioned in the report. Are there any legal reporting obligations on financial institutions and other intermediaries (such as lawyers, notaries) that contribute to the prevention of economic and financial operations with terrorist or other criminal aims? What are the penalties attached to non-compliance with any such legal obligations?

The monitoring of suspicious financial transaction is done as follows:

1. As provided under Points 1 and 2 above, through legal and monitoring measures.

2. There are legal provisions under which all financial institutions have to report to the Nepal Rastra Bank (central bank) on their financial transactions on a periodic basis on all their transactions, including the suspicious ones. If financial institutions do not comply, the central bank has the right to invoke the provisions of the Nepal Rastra Bank Act and take punitive measures.

Point 4: The CTC would be interested to know, with regard to subparagraph 1 (c), the legal basis on which Nepal freezes financial assets or economic resources which are lawful in origin or which, although not in legal terms the property of alleged terrorists organizations, may be used by them.

As mentioned under point 1 and 1 (c) above, His Majesty's Government and its agents can freeze the financial assets and economic resources under the Terrorist and Disruptive Activities (Control and Punishment) Act.

Subparagraph 2 (a):

The CTC would be grateful for a detailed outline (or, if available, a copy of an English text) of the *Terrorism and Disruptive Activities Control and Punishment Ordinance 2058 (2001)* and a progress report regarding its adoption by the Parliament.

The Terrorism and Disruptive Activities (Control and Punishment) Act 2058 (2002) is being translated into the English language. A copy of the translation will be made available to the Committee when it becomes available in English.

Subparagraph 2 (b):

Point 1: Please provide the CTC with information on the mechanism for inter-agency cooperation between the authorities responsible for narcotics control, financial tracking and security, with particular regard to the border controls preventing the movement of terrorists.

A Narcotics Control Unit under the Ministry of Home is at work trying to curb trafficking in narcotic drugs and money laundering associated with the drugs. The Unit works in cooperation with such agencies as the police, customs, revenue intelligence, and district administration throughout the country. The Home Ministry

coordinates such activities. District administration together with police is responsible for border controls, and in key places army personnel have also been deployed to prevent smuggling and the movement of narcotics and to check suspicious movement of terrorists.

Point 2: Which Nepalese institutions are responsible for providing early warning to other States?

The institutions with responsibility for providing early warning may broadly be listed as the Home Ministry, Defense Ministry, Royal Nepalese Army, Nepal Police, Bureau of Intelligence, the Centre for Vigilance (newly created), Customs, and the Department of Revenue Intelligence.

Subparagraph 2 (c):

Please elaborate on how the provisions of the Extradition Act are instrumental in implementing subparagraph 2 (c) of the resolution. Please provide the CTC with examples of relevant action taken.

According to the Extradition Act, any person committing a crime in a foreign country and who is hiding in Nepal to evade justice could be brought to the fold of the Act so long there is a bilateral treaty on extradition or there is an obligation of extradition on the part of Nepal flowing from any multilateral instrument. As the Extradition Act requires the Government either to extradite or prosecute such an offender, it is implied that no criminal can enjoy safe heaven in Nepal nor any person who assists in financing such an offender could evade justice. Moreover, Nepal is a party to such international and regional conventions as Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, Convention against the Taking of Hostages, SAARC Convention on Suppression of Terrorism, and others.

Subparagraph 2 (d):

According to the comment made under subparagraph 3 (f) of the report, any *"terrorist activity against Nepal or any other country from Nepal is punishable"* under the *Terrorism and Disruptive Activities Control and Punishment Ordinance*. Please outline how the Ordinance prevents terrorists acting from Nepal against other States or citizens.

The Terrorism and Disruptive Activities (Control and Punishment Ordinance which now has become an Act is an Act designed to control terrorist activities. Any criminal law, by virtue of its territorial application is applicable to all person in a country, irrespective of their nationality. Any person, whether a Nepali or a foreigner, committing an act of terrorism directed against Nepal or any other state or citizen from the territory of Nepal, is subject to the provisions of this Act and hence punishable.

Subparagraph 2 (e):

What is the competence of the courts of Nepal to deal with criminal acts of each of the following kinds:

- **An act committed outside Nepal by a person who is a citizen of, or habitually resident in, Nepal (whether that person is currently present in Nepal or not);**

– **An act committed outside Nepal by a foreign national who is currently in Nepal?**

– Section 4 of the Terrorist and Disruptive Activities (Control and Punishment) Act provides that any person who commits a terrorist and disruptive act targeting the Kingdom of Nepal staying outside the country shall be subject to the punishment under this Act as if such person committed that crime within the Kingdom of Nepal.

– Likewise, if a foreign national is within the territory of Nepal after the commission of a terrorist act outside the Kingdom of Nepal, he or she will be extradited or prosecuted in Nepal by virtue of the fact that for the purpose of the treaty, the provisions of a treaty to which Nepal has become a party upon ratification, accession, acceptance or approval, are applicable in Nepal in the same manner as the provisions of the national law. This provision is clearly envisaged in Section 9 of the Nepal Treaty Act.

Subparagraph 2 (f):

What is the legal timeframe within which a request for judicial assistance in criminal investigations or criminal proceedings relating to the financing or support of terrorist acts has to be met? How long would it actually take in practice to implement such a request in Nepal?

(f) There is no time frame fixed by the existing laws.

Subparagraph 3 (c):

Has Nepal entered into bilateral agreements to prevent and suppress terrorist attacks and take action against perpetrators of such acts? With which countries has Nepal concluded bilateral treaties on extradition and mutual legal assistance?

1. Nepal has an extradition treaty with India concluded in 1953.

2. Provisions of the SAARC Convention on Suppression of Terrorism to which Nepal is a party are applicable with the force of a bilateral treaty in respect of extradition and mutual legal assistance.

Subparagraph 3 (d):

The CTC would welcome a progress report, in relation to the 12 relevant international conventions and protocols relating to terrorism, on:

– **The steps taken in order to become a party to the instruments to which Nepal is not yet a party;**

– **Progress made in enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.**

1. Nepal is in the process of becoming a party to the International Convention for Suppression of Terrorist Bombings, and International Convention for the Suppression of the Financing of Terrorism. Nepal is a signatory to the United Nations Convention against Transnational Organized Crime.

2. Section 9 of the Nepal Treaty Act stipulates that the provisions of an international treaty to which Nepal is a party by way of ratification, accession, acceptance or approval shall take precedence over the provisions of domestic laws for the purpose of the treaty.

Subparagraph 3 (e):

Have the offences set forth in the relevant international conventions and protocols relating to terrorism been included as extraditable offences in the bilateral treaties to which Nepal is a party?

1. As mentioned in above paragraphs, all bilateral and multilateral treaties to which Nepal is a party assume the force of domestic law in cases where the domestic laws and the provisions of the international treaty are in conflict.

2. Most multilateral conventions have recognized offences under them as extraditable. Hence, those offences shall be considered as having been included in bilateral extradition treaties

Subparagraph 3 (f):

Please elaborate on the "verification mechanism". Is it established pursuant to domestic laws or regulations?

Under an executive decision, His Majesty's Government of Nepal, in collaboration with UNHCR, has established a verification post at the border point from which almost all Bhutanese refugees have entered into Nepal.

Subparagraph 3 (g):

According to Article I (e) of the SAARC Regional Convention on the Suppression of Terrorism (the SAARC Convention), a number of offences such as murder, manslaughter, assault causing bodily harm, kidnapping, hostage-taking and offences relating to weapons are not regarded as political offences, as offences connected with political offences or as offences inspired by political motives "*when used as a means to perpetrate indiscriminate violence*". Since subparagraph 3 (g) of the resolution requests States to ensure "*that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists*", please clarify whether the above-mentioned offences can be regarded in Nepal as political offences, as offences connected with political offences or as offences inspired by political motives when used in a non-indiscriminate manner.

Please also clarify whether the above-mentioned Article I (e) continues to be valid vis-à-vis the States Parties to the SAARC Convention and whether it reflects Nepal's State practice with regard to other States in view of the subparagraph 3 (g) of the resolution.

All offences enumerated in the SAARC Convention are considered not to be of a political nature. Hence, any offence enlisted therein is considered to be a terrorist offence and punishable accordingly.

Paragraph 4:

Has Nepal addressed any of the concerns expressed in paragraph 4 of the resolution?

His Majesty's Government of Nepal has taken the necessary measures to address the concerns relating to paragraph 4 of the Security Council resolution 1373 (2001). Nepal's accession to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances-1998 on 24 July 1991, Nepal's signatures to the Single Convention on Narcotic Drugs and Psychotropic Substances-1961 on 29 June 1987 and to the United Nations Convention against Transnational Organized Crime-2000 on 11 December 2002 are a testimony to our full commitment in this respect.

Other matters: Could Nepal please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution?

The organizational chart the administrative machinery of His Majesty's Government of Nepal will be forwarded to the Committee soon.

Assistance:

In view of the comment made in the report in relation to subparagraph 2 (g) of the resolution, it might be recalled that under Security Council resolution 1377 (2001) of 12 November 2001, the CTC has been mandated to explore ways in which States can be assisted, in particular to explore the availability of existing technical, financial, regulatory, legislative or other assistance programmes which might facilitate the implementation of resolution 1373 (2001). Please do not hesitate to specify in which areas Nepal would be interested in receiving such assistance.

Nepal needs, and will appreciate, assistance in the following major fields:

Training:

1. Training of trainers on anti-terrorism for police and military personnel.
2. Training of trainers on anti-terrorism for intelligence personnel.
3. Training of trainers on investigative skills to police and prosecutors.
4. Training to build capacity for detecting and tracking down suspicious flows of funds.
5. Training on drafting of legislative bills related to prevention and suppression of terrorism.
6. Orientation for judges and administrators who deal with the cases of terrorism.

Equipment and others:

7. Setting up of information systems and networking for effective anti-terrorism measures.
8. Equipment for strengthening intelligence.